

Appl. No. 10/751,322
Amdt. Dated 11/11/04
Reply to Office Action of 8/11/04

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. The examiner has rejected claims 1, 3, and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 2,544,106 to Ray in view of U. S. Patent Number 834,140 to Kingsbury. Applicant respectfully submits the examiner has mischaracterized the Ray and Kingsbury references as follows:

According to the examiner, Ray discloses a base member (10) having oppositely spaced side sections (11, 12) with respective bottom portions for engaging a ground surface and respective top edge portions for defining an apex of the base member (10), as recited in applicant's independent claims. Applicant submits the examiner has mischaracterized the base member (10) of Ray, which is actually a side supporting section and not a base member. Furthermore, the side sections (11, 12) are not oppositely spaced from the base member (10), but connected to it. In addition, the top edge portion of side section (12) is connected to the ground-engaging portion of the base member (10) at its lowest point, and therefore, cannot define an apex of the base member (10). Merriam-Webster defines an apex as "the uppermost point," or "the highest or culminating point" (see enclosed document).

The examiner further asserts Ray discloses an elongated plank (16) having a first end portion engaged with the base member (10) and being selectively pivotal thereabout, as recited in applicant's independent claims. Applicant submits the plank (16) of Ray is not engaged with the base member (10), but with a pivot bar (14). If the plank (16) were engaged with the base member (10), the plank would be off center, rendering the seesaw unbalanced and unsafe. In addition, applicant submits Ray's plank (16) is engaged medially, not via its end portion. Were the plank (16) not engaged medially, the weight (25) of Ray would not be able to counterbalance the weight of the rider. If the end portion of the plank (16) engaged the pivot bar (14), a counter balancing weight (25) would not be necessary, nor practical.

The examiner further asserts Ray discloses a lifting means (29) connected to the base member (10) and the plank (16) respectively, as recited in applicant's independent claims. Applicant submits the lifting means (29) of Ray is not connected to the base

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member (10), but rather, is connected to the plank (16) and the side section (12).

The examiner further asserts the piston (31) of Ray is disposed medially of the side sections (11, 12), as recited in applicant's claims 3, 7 and 10. Applicant submits the piston (31) of Ray is disposed medially of side section (12), not medially of the two side sections (11, 12). Furthermore, no remaining prior art of record discloses nor makes obvious the need to include a piston disposed medially of the side sections.

Examiner acknowledges Ray fails to teach the use of a back section being integral with the base member and spaced between the side sections, as recited in applicant's independent claims. The examiner asserts Kingsbury discloses a seesaw having side sections (10) and a back section (11) integral therewith and spaced between the side sections and therefore, it would have been obvious to one of ordinary skill in the art to provide a back section as taught by Kingsbury to the side sections (11) of Ray for the purpose of enhancing the rigidity of the base member. The fact that a simple solution has escaped other workers in the art is some evidence that it was not obvious to a person of ordinary skill in the art. See *In re Shelby*, 311 F.2d 807, 810, 136 USPQ 220 (CCPA 1963). Applicant further submits the back section (11) of Kingsbury is not integral with the base member (10), but rather is fastened to the base member via a plurality of tongues (13) projecting out from the edges of the base member (10). Merriam-Webster defines integral as "formed as a unit with another part," i.e. a seat with an integral headrest. (see enclosed document). Because the back section (11) of Kingsbury is removably fastened to the base member, it is not integral therewith (column 2, lines 66-70).

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable. All pending dependent claims necessarily include the recitations of their independent claims and therefore are also in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.


Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would

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facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Respectfully submitted,
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By


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